



Decree would significantly impair the ability of the Acquirer or Acquirers<sup>1</sup> of the Divested Assets to be “viable and effective competitors” who could sustainably “engage in further development and enhancement of Nastran Software.”

Under the Proposed Consent Decree, MSC would be left in a well-entrenched position, resulting from its 1999 acquisitions of its only meaningful competitors, that enables it to maintain control over the entry of competitors. For example, MSC would continue to benefit from many of the long-term customer contracts which it was able to procure only because of its monopoly power after 1999. In addition, under the Proposed Consent Decree, the prospects for viable entry by the Acquirer would be substantially impaired by MSC’s continuing product development advantage, an advantage that resulted from its elimination in 1999 of the only other competitors then engaged in implementing improvements and enhancements in NASTRAN. These limitations in the relief provided by the Proposed Consent Decree are confirmed by MSC’s recent public acknowledgement that the Proposed Consent Decree will have no adverse impact in its ability to continue to enjoy the benefits it has derived from eliminating its competition.<sup>2</sup>

To avoid ratifying a settlement that fails to achieve its goals of creating a viable NASTRAN competitor and thereby restoring competition in that market, the Commission should require that MSC accept the following modifications to the settlement:

- Section VII’s grant to customers of a right to rescind certain existing contracts with MSC should be extended to

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<sup>1</sup> For convenience only, the singular term will be used hereinafter to refer to the singular or the plural.

<sup>2</sup> At a recent conference call with industry analysts, MSC’s Chief Executive Officer twice emphasized to analysts that the consent decree “has no material impact on our business from a strategic point of view and/or from a financial point of view” and will “have no adverse impact on our operation or our financial performance currently and going forward.” MSC Software Corporation, FTC Resolution Announcement Conference Call with Securities Analysts (“Analysts Conference”) at 4, 11 (August 14, 2002). A transcript of the conference is attached hereto. An audio recording of the call is posted at <http://www.mscsoftware.com/ir/>.

all customers who entered into contracts since the 1999 acquisitions;

- For customers who converted annual leases into paid-up contracts after the Acquisitions, the pro rata refund provided in Section VII.A. should be the lesser of the term specified in the contract or six (6) years, not four (4) years, and the period of the proration should be based on the date of the Commission's approval of the Consent Decree, in order to remove an incentive for MSC to delay the divestiture;
- The "Licensed Rights" defined in Section I.L.1.a. should include any improvements in NASTRAN announced by MSC to the market during the twelve months following the Divestiture Date; and
- MSC should be compelled to assist the Acquirer in hiring up to two experienced NASTRAN sales personnel in the United States and two outside the United States.

As discussed in more detail below, these modifications are necessary to avoid needlessly jeopardizing the ability of an Acquirer to achieve the Commission's objectives. Such modifications should hardly be controversial to MSC in light of the substantial benefits which MSC has publicly acknowledged that it derives from a negotiated resolution to this litigation.<sup>3</sup>

### ANSYS

ANSYS develops and globally markets engineering simulation software.

Although the functions of ANSYS's simulation software are similar to those of NASTRAN, ANSYS's established software is not reasonably interchangeable with NASTRAN for many established NASTRAN users because of the magnitude of the switching costs which those established NASTRAN users would experience.

In late 2001, ANSYS agreed with Schaffer Automated Simulation, LLC ("SAS"), a start-up software developer, to form an alliance to develop and market a NASTRAN product.

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<sup>3</sup> MSC's Chief Executive Officer described the negotiated resolution as a "real win . . . for us", and further stated that it "brings to closure this annoying situation, and it also brings to closure the drain on our resources—both managerial and financial." Analysts Conference at 1-2, 11.

### MSC's ENTRENCHED POSITION

NASTRAN is used to test the designs of products like automobiles, missiles and airplanes to simulate the products' performance (or even to avoid catastrophic failure) under a number of different operating conditions. NASTRAN also reduces the need to do physical prototype testing and allows users to consider various design alternatives. Many users, including NASA, Lockheed, Boeing and Ford, to name just a few, have relied upon NASTRAN for years, even decades, and have made enormous investments in building processes around NASTRAN.

The importance to existing NASTRAN users of reliability and predictability strongly entrenches MSC's position as the only current supplier of NASTRAN. Indeed, the risk of using a new (unproven) supplier provides a strong incentive for an existing user to stay with its current supplier, even if it is paying supra-competitive prices, because the cost of switching suppliers (in terms of down time or development costs) can easily exceed savings from the price of the software. As one industry observer has queried: "As a practical matter, what would be the

motivation for a [NASTRAN] customer to switch at all? There is going to be some new competition, of course, but if they take into account the long-term development of the product, which [MSC will] still be able to do, what's the practical motivation to switch at all?" Analysts Conference at 5.

Against this backdrop, one of the most important aspects of the Acquirer's ability effectively to challenge MSC's entrenched position will be the extent of the Acquirer's ability to invest in research and development to improve the NASTRAN product by adding additional features, which increase the efficiency of the user's product design process while maintaining or improving the reliability of the software. Indeed, the Proposed Consent Decree identifies as one of its purposes a divestiture to up to two firms "with the ability to engage in further development and enhancement of advanced NASTRAN software." It emphasizes the importance of "the likely future capability of the prospective Acquirer or acquirers to provide effective . . . innovation competition to MSC."

The single most important factor in the Acquirer's ability to meet these objectives is its ability to obtain a stable, critical mass of sales revenue to fund long-term, future development of NASTRAN. Unfortunately, the Proposed Consent Decree leaves available to MSC numerous avenues through which to create substantial financial problems for the Acquirer, thereby debilitating the strength of its entry, and delaying for a critical period the Acquirer's ability to obtain a critical mass of sales revenues to fund future development. MSC's principal weapon against the Acquirer in its struggle to gain critical sales revenue is MSC's ability to use its revenue from existing contract commitments (acquired as the result of its past monopoly power) to fund discriminatory pricing practices in defense of its entrenched position.

Since 1999, MSC has solidified its entrenched position by using its powers as the only presently available NASTRAN supplier to tie important NASTRAN users into long-term license and maintenance contracts. While some of these contracts that provide for paid-up licenses are addressed by the Proposed Consent Decree, others that provide for long-term annual license payments are not. Thus, absent broader relief from the Commission, many customers will remain bound to the lengthy contractual commitments they made while they had no alternative NASTRAN supplier.

With many customers committed to supra-competitive pricing under long term contracts not addressed by the Proposed Consent Decree, MSC can afford discriminatorily to grant sizeable discounts to that limited number of customers who, under the Proposed Consent Decree, are allowed to rescind their current agreement with MSC and who desire to deal with the Acquirer. Such discrimination will permit MSC to reduce prices toward, and potentially beyond, its minimal marginal cost. See Analysts Conference at 5-6. MSC's ability under the Proposed Consent Decree to engage in such practices is significant because, to overcome established NASTRAN customers' natural inertia and encourage them to consider the Acquirer's product, the Acquirer must simultaneously offer significant discounts from MSC's pricing and commit substantial resources to research and development. Indeed, established NASTRAN users are unlikely to commit to the Acquirer with a license contract unless the Acquirer entrant can convince the customer (even before the Acquirer has any NASTRAN revenues) that the Acquirer will commit substantial resources to future NASTRAN research and development.

In light of these circumstances, if the Acquirer is to have success in challenging MSC's entrenched position, it must be able to compete for all customers affected by MSC's past monopolistic practices and MSC can not be permitted to use revenue from its past monopolistic

practices to fund discriminatory conduct that frustrates the Acquirer's ability to engage in future product development.

## PROPOSED MODIFICATIONS TO THE CONSENT DECREE

### A. CURRENT CUSTOMER AGREEMENTS

All customer agreements or licenses for NASTRAN which were entered into by MSC after the 1999 acquisitions of UAI and CSAR are products of MSC's monopoly position. Section VII of the Proposed Consent Decree allows only a limited group of customers to escape from certain of these obligations, but only if the contract is in the form of a paid-up license converted from annual leases. Other customers subject to such existing contracts would continue to have to pay supra-competitive prices. Moreover, by thus continuing to keep customers tied up, MSC enjoys the benefit of preventing the Acquirer from doing business with such customers. This foreclosure restrains the Acquirer's potential sales and impairs its potential for viability.

Furthermore, at least some of these agreements incorporate supra-competitive pricing. Enforcing such contracts allows MSC to use its supra-competitive profits to fund uneconomical price cuts for other customers who demonstrate an interest in dealing with the Acquirer. MSC has made clear its intent that, where NASTRAN users evidence an interest in dealing with the Acquirer, MSC will aggressively use price-cutting and other competitive strategies to prevent the Acquirer from making sales. As MSC's Chief Financial Officer told industry analysts, if "there is a customer who elects to move in the direction of the licensee [the Acquirer], there's nothing to prevent us from counteroffers. As a result, our hands are not tied. We don't have to walk away from that customer." Analysts Conference at 5-6.

To improve the prospects for the Acquirer to be viable and to extend to customers relief from MSC's monopolistic practices, all customers who continue to be subject to contracts

entered into with MSC after the UAI and CSAR acquisitions should, pursuant to Section VII of the Consent Decree, be permitted to rescind their contracts and entertain offers from the Acquirer.

B. PREPAYMENTS FOR CONTRACTS WITH AN INDEFINITE TERM SHOULD BE PRORATED OVER A PERIOD OF AT LEAST SIX YEARS

As noted above, Section VII provides that customers who have entered into multi-year prepaid contracts after 1999 (unlike customers who entered into contracts for a similar length of time but without prepaying) can rescind the contract and receive a refund. However, for customers who entered into prepaid contracts for a perpetual license, the Proposed Consent Decree artificially limits the amount of the refund by restricting the proration period to four years, notwithstanding the perpetual nature of the license purchased. By reducing the amount of the customer's rebate, this foreshortened proration period significantly impairs the customer's incentive to deal with the Acquirer. For example, under the Proposed Consent Decree a customer who entered into a paid up, perpetual license in June 2000, if negotiating with the Acquirer in June 2003 after the completion of the divestiture, would be entitled to a refund of only one-fourth of the license fee it had paid for a perpetual license.

The practical significance of the limitation on the proration period to four years, together with the absence of any rescission right for contracts that are not paid up in advance, is apparent from the fact that, although MSC's NASTRAN revenues are "roughly \$30 million" each year in the United States alone, the maximum refund that MSC could be required to make is only \$10 million, even if all forty eligible customers converted to the Acquirer as soon as possible. Analysts Conference at 2, 4-5. Recognizing that the Acquirer would have to substantially under-price MSC to overcome a customer's natural inertia to remain with its existing supplier, the Acquirer, in substance, has little or no ability to complete a sale to a

customer receiving a refund of only this small proportion of its prepayment. Moreover, after the Acquirer fends off MSC's targeted price competition for the limited number of customers eligible for a refund who would entertain the prospect of switching to the Acquirer, the reduced price available to the Acquirer would not provide adequate remuneration to fund a contribution to the Acquirer's essential research and development. Thus, these customers, like those subject to multi-year (but not prepaid) contracts, are effectively unavailable to the Acquirer, reducing the prospects for the viability of the Acquirer's NASTRAN operations.

Moreover, MSC can decrease the amount of its refunds simply by delaying the Divestiture Date. Since the customer's refund is, under the Proposed Consent Decree, pro rated beginning with the date the customer elects to deal with the Acquirer and the customer cannot make that choice until after the Divestiture Date, MSC has a built-in incentive to reduce its possible refund expense by delaying the Divestiture Date. As MSC's Chief Executive Officer explained: "If there was a licensee established by say January, 2003, there would be a maximum exposure of less than \$10,000,000 that diminishes quarterly going forward because of the fact that those contracts are being used up." Analysts Conference at 2. Accordingly, all customer refunds should be prorated as of the date of the Consent Order in order to avoid giving MSC an incentive to delay the divestiture. A prompt divestiture, not delay, is in the public interest. As the Commission has recognized, "[T]he Commission's divestiture process must take into account the adverse incentives of the respondent." Federal Trade Commission, A Study of the Commission's Divestiture process ("Divestiture Study") at 16-19, 28 (1999). A proration date based upon the date of the Consent Order rather than Divestiture Date would provide an affirmative incentive for MSC to complete the divestiture in a timely fashion in order to minimize the period of time that its product is licensed for a fixed payment amount.

C. THE LICENSED RIGHTS SHOULD INCLUDE ALL MSC.NASTRAN PRODUCTS ANNOUNCED TO THE PUBLIC WITHIN TWELVE MONTHS AFTER THE DIVESTITURE DATE

Since all NASTRAN users are now accustomed to dealing with MSC, the Acquirer will need to provide these customers with a substantial incentive to overcome their natural inertia to remain with their existing licensor. In an industry where innovation produced by research and development is an important competitive factor, the customers' bonds to MSC will be even more difficult for the Acquirer to break if MSC is able to tell the customer that MSC is offering a new NASTRAN product that is superior to the one which the Acquirer will be offering after the Divestiture Date.

Thus, the Proposed Consent Decree contains a built-in incentive for MSC to delay the release a new version of NASTRAN (perhaps one already developed) until shortly after approval of the Consent Decree. This built-in incentive harms consumers in the short term by depriving them of the timely release of improvements and also in the long term by immediately putting the Acquirer at a significant disadvantage. (Presumably, the Proposed Consent Decree's requirement that MSC divest a license to MSC's current version of MSC.Nastran rather than the now antiquated UAI or CSAR products is intended to avoid just such a disparity in the vitality of the product that the Acquirer has to offer.) The fact that MSC's Chief Executive Officer recently reminded analysts no fewer than three separate times that the Proposed Consent Decree involves only the current (i.e., 2001) version of NASTRAN suggests that MSC is aware that it can immediately disadvantage the Acquirer by bringing out a new version of NASTRAN shortly after its divestiture obligations are finalized. See Analysts Conference at 2-3 (“[t]he post 2001 versions are not included in this settlement”; “this agreement relates to what we refer to as the 2001 version of NASTRAN”; “the license is limited to the current version of NASTRAN”).

While it is reasonable to expect the Acquirer to begin its own research and development efforts once it has acquired the Divested Assets, the Acquirer obviously cannot engage in any meaningful research and development until it has control over the Divested Assets and understands the product base upon which its own development efforts must be based. Accordingly, absent a license to any technology announced to the market by MSC in the several months following the Divestiture Date, the Acquirer will have only outdated technology to license, mandating even steeper price discounts to attempt to dislodge customers from the entrenched, dominant firm. But there is no assurance that even deep discounting will enable the Acquirer to entice significant amounts of business away from the dominant firm. And even if business is obtained at steep discounts, those discounts will jeopardize the Acquirer's ability to finance its own research and development to catch up with and eventually attempt to surpass MSC.

Thus, MSC's ability immediately to offer customers newer NASTRAN technology than the Acquirer jeopardizes the viability of the Acquirer as a vital competitor able to contest the market with MSC on the basis of price and innovation. The Commission's experience has shown that respondents' success in limiting the scope of the products to be divested can be an important factor in enabling the respondent to foreclose the establishment of a viable competitor. Divestiture Study at 16-19, 28.

D. THE ACQUIRER SHOULD BE PERMITTED TO HIRE UP TO TWO SALES PERSONNEL IN THE UNITED STATES AND TWO OUTSIDE THE UNITED STATES

To be successful, the Acquirer will have to be able to persuade customers that the Acquirer's NASTRAN product will fit seamlessly into the space to be vacated by MSC.Nastran. The cost to the customer of downtime or of an expanded development cycle is likely

substantially to exceed the savings available from a lower price on the software. Thus, customers who have already been victimized by MSC's supra-competitive prices may frequently feel they cannot afford to incur additional costs in switching to a new supplier. Since NASTRAN products often are required to fit into a customized environment, educating customers on the feasibility of switching and identifying the customer's least-cost pathway to switching will frequently require the Acquirer to use sales personnel with specific and extensive knowledge of NASTRAN products and how they work in the customer's environment. See Divestiture Study at 27, 37. Since MSC has had the only NASTRAN products for the last three years, it enjoys the only substantial supply of sales people with the required experience and depth of knowledge of the NASTRAN product.

While the Acquirer can attempt to hire these people through employment advertising and similar channels, the Acquirer's success in hiring the most appropriate personnel and using them productively would be markedly improved if MSC were required to cooperate in the Acquirer's hiring of a limited number of current MSC sales personnel, as it is in the hiring of development and customer support personnel. The Commission has noted in its Divestiture Study the importance of requiring respondents to facilitate the transfer of knowledgeable staff to the buyer. Divestiture Study at 14, 27-28.

Accordingly, Section V. A and B of the Consent Order should require MSC to facilitate the Acquirer's hiring of a limited number of MSC's sales personnel, as it does designers, developers and customer support personnel. Access to such sales personnel would not impose any substantial burden on MSC, since the Acquirer, under Section I.E.3.b. of the Consent Order, already has access to all of MSC's MSC.Nastran sales and marketing information. Thus, the additional requirement would merely assist the Acquirer in identifying those individuals who have the relevant, specialized knowledge that is a key to the Acquirer's viability as a competitor.

## CONCLUSION

While the Proposed Consent Decree takes significant steps toward restoring competition in the sale of NASTRAN software, it omits some provisions which are likely to be critical to ensuring that the required divestiture achieves its intended objectives of establishing one or more viable and effective competitors, capable in the long term of effectively competing with MSC in both the pricing and the further development and enhancement of NASTRAN software. To ensure that the Commission's strenuous efforts to restore competition in this market are not wasted, the Proposed Consent Order should be modified in the following respects:

- Section VII's grant to customers of a right to rescind certain existing contracts with MSC should be extended to all customers who entered into contracts since the 1999 acquisitions;
- For customers who converted annual leases into paid-up contracts after the Acquisitions, the pro rata refund provided in Section VII.A. should be the lesser of the term specified in the contract or six (6) years, not four (4) years, and the period of the proration should be based on the date of the Commission's approval of the Consent Decree, in order to remove an incentive for MSC to delay the divestiture;
- The "Licensed Rights" defined in Section I.L.1.a. should include any improvements in NASTRAN announced by MSC to the market during the twelve months following the Divestiture Date;
- MSC should be compelled to assist the Acquirer in hiring up to two experienced NASTRAN sales personnel in the United States and two outside the United States.

Respectfully submitted,  
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## MSC FTC RESOLUTION ANNOUNCEMENT CONFERENCE CALL

Good afternoon. My name is Tiffany and I will be your conference facilitator today. At this time I would like to welcome everyone to the MSC Software Update conference call. All lines have been placed on mute to prevent any background noise. After the speaker's remarks, there will be a question and answer period. If you would like to ask a question during this time, simply press star and the number 1 on your telephone keypad. If you would like to withdraw your question, please press the # key. Thank you. Ms. Keeps, you may begin your conference call.

**JOANNE** Thank you for joining us this afternoon for our conference call to discuss the recently published settlement with the Federal Trade Commission. With me today from MSC Software are Frank Perna, our Chairman and CEO, as well as Lou Greco, our Chief Financial Officer. The format for this call will include an opening comment from Frank and Lou regarding the terms of the settlement. We will then open the call to questions. Due to issues regarding scheduling, the length of this call will be limited, so we ask you to limit your multiple-part questions. Before we begin, let me remind you that remarks we may make during this conference call concerning outlook are forward looking statements. Some statements are based on management's current expectations and are subject to a number of factors and uncertainties. These factors and uncertainties are detailed in our annual report on Form 10-K and other reports filed by the company with the SEC from time to time. At this point, I'd like to turn the call over to Frank. Go ahead Frank.

**FRANK PERNA** Thank you Joanne. And good afternoon. It's a pleasure to have this opportunity to discuss the situation. It's been something that's been certainly on my mind for some time and certainly yours. We consider this settlement a real win, you know, for

us. You know the trial has been avoided and the legal expenses in defense of our position have also ended. There is no adverse impact to our business and to that point we haven't changed any of our guidance for revenue or earnings going forward. The key points of the settlement are as follows: First of all, the settlement is without any admission, without any prejudice, without any wrong doing. There's no fines; there are no penalties. There, again, there is no admission of wrongdoing. There's no trial and there's really no need for any further proceedings. The settlement involves a description as seen in the agreement of the licensing of a clone of the current version of NASTRAN—MSC NASTRAN. The other point is that the term divestiture is used and really what that means is finding a licensee. The post version of 2001 are not included in this settlement. And the settlement involves finding up to two companies as licensees. In addition, the UAI and CSA source code as they exist today, which is the same as when we purchased them, will also be included in the divestiture. Another aspect of the agreement is the fact that it relates to U.S. customers that have converted their licenses to a paid up or perpetual purchases since July 1999. What this involves is allowing those customers, if they want, to renegotiate the contract with ourselves as well as with at the negotiating table with the new licensee. Those customers will be refunded the portion of their procurement that has not been used based on a life term of four years. So, this again is only for those contracts that were converted from annual leases to paid up and only for the portion of the contracts that are related to specifically the NASTRAN solver. Many of these contracts involve you know relationships of, or bundling of other product. The exposure if you would look at a number and try to figure out what the impact or what the worst case possible impact. If there was a licensee established by say January 2003, there would be a maximum exposure of less than \$10,000,000 that diminishes quarterly going forward because of the fact that those contracts are being used up. Of

course this, the probability that all the contracts would be renegotiated as of that date of a new licensee, it is unknown at this time and the fact that we have not it's impossible to establish whether or not an exposure does indeed exist is one of the reasons that there is no settlement reserve taken at this time, and this is certainly, and we've analyzed this in detail. Another important point to mention is that this agreement only relates to what we refer to as the 2001 version of NASTRAN. It does not impact our other products such as NASTRAN for Windows, our [INAUDIBLE], the Adam products, the working model products. This is only limited to the contract involving the 2001 version of NASTRAN. We have until the next five months let's say to the end of the year to find a licensee. After that period, there will be a trustee that will go ahead and then proceed to find a licensee. The FTC wants the licensee to be a credible competitor and so, therefore, the person that qualified to be a licensee in this case would have to have the ability to service and develop the code and to sell and support the product in the industries that we current serve. From MSC's perspective on the settlement is such that it terminates all the legal costs we incurred over the last couple of quarters. And now the company is heading on our primary business objective has been. Like I said earlier, no admission of wrongdoing, no fines, no penalties. And the licensee is limited to the current version of NASTRAN. The contract that we're talking about is only those contracts for the current version from our annual leases to paid up. If a licensee is not found in the stipulated time of the settlement, like I said earlier, if the is trustee appointed, the trustee will have the opportunity to find a licensee over the next following year. And there's a possibility that there could be a couple—there could be two one-year extensions. This settlement certainly meets our objectives. It certainly brings a closure to the drain on our resources both managerial and financial. And it has an absolute minimal effect or impact on our strategy and our business going forward. We've

got a very solid strategy which involves software, services and systems. If you looked at the overall total NASTRAN revenue that we have in the company world wide, it's about \$60,000,000. About half of that is in the United States. The run rate of our business today is approaching \$400,000,000, so we as I said earlier, the settlement indeed has no material impact on our business from a strategic point of view and/or from a financial point of view. And with that, I'll be very happy to clarify any points in the Q & A.

**TIFFANY** At this time I would like to remind everyone in order to ask a question, please press start and the number one on your telephone key pad. We'll pause for just a moment to compile the Q & A roster. The first question comes from Herb Klinger.

**HERB** Thank you. Herb Klinger with Advest. Just a couple of quick questions. First regarding any potential licensee. Do you have any veto power at all if a company were to come forward and say they want to be a licensee? Do you have to give it to them if they are a credible company? Or can you say, we'd rather not them have it. And second question regarding NASTRAN revenues. Can you tell us what they were in the first six months of this year and for all of 2001? Thanks.

**FRANK** With regards to the veto power we certainly have to agree if the agreement is going to be with the company if it's a credible participant, we would go ahead and proceed. With regards to the revenue Lou could you clarify that point?

**LOU** Oh sure. As Frank mentioned our total NASTRAN business world wide is about 50 or 60 million dollars and approximately half of that is United States business. So roughly 30 million dollars 25 to 35 million dollars is NASTRAN U.S. business on an annual basis. And that's the combination of the licensing of the product as well as the support for the

product. Recognizing that our software business is a \$200,000,000 business so NASTRAN really only represents 20, 25 maybe 30 percent of the total software business for the company.

**FRANK** Ok Lou. Thanks a lot.

**JOANNE** The next question comes from Jay Lecower.

**JAY** Certain assumptions what the revenue exposure could be assuming a licensee is found by the beginning of next year. How many different customers does that actually represent? How many customers actually did in fact make this license switch that you talked about and for Lou how do you report any of these so-called refunds that you would have to give. How would that be recognized or reported in the financial statements if and when you needed to do such a thing. And then for Frank, let's say you do again find a licensee. As a practical matter, what would be the motivation for a customer to switch at all? There is going to be some new competition, of course, but if they take into account the long-term development of the product, which you'll still be able to do, what's the practical motivation to switch at all?

**FRANK** With regards to the question as to the number of contracts or customers that fall into that basket, it's around 40 or so specific contracts that we're talking about that are in that basket. And to Lou the second part. . .

**LOU** Well, I'll touch on that in two ways. Number 1. There is no restatement of any prior period as a result of anything that happens going forward pertaining to this settlement. There is no reason for any kind of a restatement. Now, having said that if in fact there is a licensee and there is a customer who elects to move in the direction of the licensee, there's nothing to prevent us from counteroffers. As a result, our hands are not tied. We don't have to walk away from that customer. It's to be a competitive market, and we will compete for that business and continue to compete for that business. If at the end of the day, there is a

potential refund of sorts, that would end up as an expense—a settlement expense—on the P&L statement for that period. That's the way it's anticipated right now.

**FRANK** The last part of the question Jay was you know why would a customer consider switching and I would really have to put myself in that customer's position to answer that. But all I can say categorically is that its our policy for customer's satisfaction and we're going to do what we have done historically is focus on helping our customer satisfy his needs. Now if there is an economic reason or an economic benefit that the customer may see by negotiating. Like Lou said, we'll participate in that negotiation.

**JAY** Thanks Frank. Thanks a lot.

**FRANK** Um. Uh.

**TIFFANY** Your next question comes from William Brume.

**WILLIAM** Thanks. Quick question for you. One of the points in the order refers to you guys, any licensee as being assisted in hiring potentially personnel from you. Can you give a little bit more color around what exactly that involves? And what exactly is going there?

**FRANK** The big thing there, Bill that's a good question, is that we have as our normal practice confidentiality agreements that employees are obligated to respect particularly as it relates to product development and things like that. In the case where an employee elects to go the new licensee, we would not hold him to the confidentiality as it relates only to the NASTRANs technology that we're speaking about.

**WILLIAM** Okay. Great. Thanks.

**JOANNE** Your next question comes from Jerome Nassari.

**JEROME** The question that I have is: does the licensee have to be a public corporation or a private corporation or any organization which is a university or a governmental agency?

**FRANK** The licensee has to have the potential or be a viable provider in the market place. The FTC will certainly look at that and make that determination.

**JEROME** Okay. Thank you.

**JOANNE** Your next question comes from Justin Sable.

**JUSTIN** Hi. I guess the NASTRAN product that the FTC was challenging, I was assuming that it was an advanced version—a specific advanced version of NASTRAN developed by MSC Software, as well as the two versions that you acquired. Am I incorrect in this assumption?

**FRANK** Uh. There is a little confusion on that point because we only have one version of NASTRAN. The definition of advanced was the definition that the FTC created.

**JUSTIN** Okay. But the bottom line though is the NASTRAN product is based on an open source code anyways.

**FRANK** That's correct. That's absolutely correct. The NASTRAN code is based on an open source code that's available today as it has been over the last many years. You know from NASA, and it's referred to the cosmic NASTRAN.

**JUSTIN** Okay. And then you were talking about, I guess the exposure number, you give a number of about \$10,000,000. Was that a quarterly number?

**FRANK** No. That's the total number that relates to the contracts that were established since July of 1999 through today.

**JUSTIN** I see. Okay. And then you're guidance for this second half of 2002 essentially remains the same?

**FRANK** Yeah, Lou you can comment on that.

**LOU** Yes, it does. There are no changes in guidances as a result of this proposed settlement at all.

**JUSTIN** Okay. Thank you.

**TIFFANY** At this time, I would like to remind everyone in order to ask a question, please press star and the number 1 on your telephone key pad. You have a follow-up question from Herb Singer.

**HERB** Thanks. Just one last question Frank. How long do you estimate it would take a potential competitor to have taken the existing open sort NASTRAN code and develop a version similar to what you would now be licensing potentially to companies.

**FRANK** Yea. That is a very complicated question and I really and I would not even venture to guess cause I don't know. But I do know that you can you can get the cosmic NASTRAN and that's an open source code that is available today so to go ahead and to bring it up to the level of MSC NASTRAN that would be. . . I'm really not that technically competent to answer that question. But the one thing that MSC software brings to the table is the fact that we do have a strategy that involves software service systems and a lot of customer support, activities that the credibility—the main expertise that we've established in over the years, so that's the thing that I know for sure.

**HERB** Clearly, this will be appealing to one or more companies since they'll be saving a lot of development effort.

**FRANK** I don't know. Then, they should pay a big price for it? Right?

**HERB** You would think so, accept they don't have to.

**FRANK** Depends.

**HERB** And do you have to. . . Does MSC or the company have to go out and aggressively market to potential licensees, and say "hey," this is now available. Or do you have to wait for them to come to you?

**FRANK** We intend to in good faith comply with this agreement 100 percent.

**HERB** Okay. Thank you very much.

**TIFFANY** At this time you have a follow-up question. Karim Nezari.

[INAUDIBLE]

**KARIM** Frank what happens in the case of multiple candidates for your licensee that are all credible organizations? Who makes the final determination?

**FRANK** If there is multiple licensees, then we will have a big say into which one would be determined or there could be like the agreement settlement proposal stand, that could qualified, there could be both of them could be qualified.

**KARIM** It says there's one or two in this case, what about if there are five qualified?

**FRANK** It says one or two. . . If there is five, then that's going to be more than one or two. Then only one or two are going to be selected.

**KARIM** Okay.

**TIFFANY** The next question comes from Stephen Ulrich.

**STEVE** Uh yes Frank. Could you just give us some idea of these two companies who will be selected. Are they going to have to pay us something for this? Is that correct?

**FRANK** Yes.

**STEVE** And how's that going to be determined?

**FRANK** Through negotiations.

**STEVE** All right. Okay. But the key thing is that this is not something that they are getting for free. I don't think that people knew that necessarily.

**FRANK** That's correct. I mean the purpose here is to find a credible licensee that's going to support and provide the product into the market place. So, the objective here is to find this licensee and we'll go forward under that, with that objective, and hopefully there's going to be a large amount of money related to it.

**STEVE** Okay. Thanks for making that clear.

**JOANNE** Okay. Tiffany, we have time for one more question if there are any?

**TIFFANY** Okay. Thank you. The next question comes from Larry Linton.

**LARRY** Just a clarification. If we find one credible licensee, does that meet the terms of the agreement? Or, if there are multiple licensees we would have to license it to two?

**FRANK** The FTC was pretty clear on saying one or two, so that final determination would be made by the FTC.

**LARRY** And the licensing agreement would likely be a one-time payment or royalty or some combination thereof?

**FRANK** We that could very well be some of the negotiations that goes on in the determination.

**LARRY** And realistically when you survey the scene, are there just a handful of potential licensees or is it more complex than that?

**FRANK** We're right now engaging in that process to survey the universe. There could very well be a number of candidates out there.

**LARRY** Do you think you're going to end up with a number of a half dozen or a dozen or is it much more extensive than that?

**FRANK** Gee, I'm hoping to find one or two.

**LARRY** Okay. I won't belabor it, I'm just asking for the candidate list.

**FRANK** No, I really don't have a candidate list at this moment.

**LARRY** Thank you.

**FRANK** Well, again, I want to thank you all for responding in such short notice. Again, we're quite pleased with the settlement. We look at this as a win-win. There's no admission of any wrong doing here. It brings to closure this annoying situation, and it also brings to closure the drain on our resources—both managerial and financial. And it does indeed have no adverse impact on our operation or our financial performance currently and going forward. So again, thank you very much and have a great day.

**TIFFANY** Thank you for participating in today's conference call. You may now disconnect.